

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Honorable Benjamin J. Culbertson, Circuit Court Judge

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Case No. 2022-CP-26-04863

**Appellate Case No.: 2023-001088**

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Thomas Richard Kline and Karen Marie Kline ..... Respondents,

v.

Rhonda Merritt.....Appellant.

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**RESPONDENTS' MOTION TO DISMISS**

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Respondents, move, pursuant to Rule 240, SCACR, for an order under Rule 260, SCACR (or any other legal authority), dismissing this appeal on the grounds Appellant, Rhonda Merritt, failed to comply with substantive and procedural requirements of the law because: (i) Appellant violated Rule 203(b)(1), SCACR by failing to serve a timely notice of appeal on Respondents; (ii) the issues raised by Appellant in this appeal were not raised nor ruled on by the trial court; (iii) the Order denying Appellant's Motion for Judgment was without prejudice, and is interlocutory and not immediately appealable; and (iv) the Order granting Respondents' Motion to Compel is interlocutory and not immediately appealable.

## LEGAL STANDARD

### **Pro Se Litigants**

A pro se litigant assumes full responsibility for complying with the substantive and procedural requirements of the law. State v. Burton, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003). “Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) (citing Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct.App.1988)).

Both the Court of Appeals and the Clerk of the Court of Appeals have the authority to dismiss an appeal when a party fails to comply with the South Carolina Appellate Court Rules. See Rule 260, SCACR (“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the Clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.”); Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992) (holding the South Carolina Appellate Court Rules are not mere technicalities and the Court had complete justification to dismiss an appeal where a party failed to comply with those Rules).

### **I. Failure to Serve Timely Notice of Appeal**

Under Rule 203(B)(1), SCACR, a notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.

## **II. Issues Not Raised and Ruled on by the Trial Court are Not Appealable**

In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003). If not raised at the initial hearing, under Rule 59(e), SCRCPP, a motion to alter or amend the judgment shall be served not later than 10 days after the receipt of written notice of the entry of the order.

## **III. A Dismissal Without Prejudice is Not Immediately Appealable**

Under Rule 41, SCRCPP, unless otherwise specified in an order, a dismissal is without prejudice. In addition, the denial of a motion under Rule 12(b)(6), SCRCPP, is not immediately appealable. Burkey v. Noce, et al., 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012).

## **IV. Interlocutory Orders are Not Immediately Appealable**

An order directing a party to participate in discovery is interlocutory and not directly appealable. Richardson v. Halcyon Real Est. Servs., LLP, et al., 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (quoting Ex parte Whetstone, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986)).

## **STATEMENT OF THE CASE**

This is an appeal of an action for Declaratory Judgment, Specific Performance, Breach of Contract, Breach of Contract with Fraudulent Intent, and Quiet Title, regarding real property located at 723 Riverward Drive, Myrtle Beach, South Carolina, 29588 (“Property”). On June 5, 2022, Thomas Richard Kline and Karen Marie Kline (“Respondents”) contracted to buy property from Rhonda Merritt (“Appellant”). On the day of closing, Respondents executed their closing documents, but Appellant refused to sign anything. Respondents filed suit on July 29, 2022.

Throughout the discovery phase, Appellant did not comply with any discovery requests. On February 13, 2023, Appellant filed a Motion for Judgment. Subsequently, on February 24, 2023, Respondents filed a Motion to Compel Appellant to comply with discovery requests. On June 21, 2023, the Honorable Benjamin J. Culbertson held a hearing via WebEx to review and rule on both motions. During this hearing, Judge Culbertson denied Appellant's Motion for Judgment and granted Respondents' Motion to Compel discovery responses. On June 28, 2023, Appellant was sent a notice of deposition by the Respondents. Appellant did not appear for her deposition. On July 6, 2023, Appellant apparently filed an appeal with the South Carolina Court of Appeals.

### **ARGUMENT**

#### **I. Failure to Timely Serve a Notice of Appeal is Grounds to Dismiss This Appeal**

Appellant filed her Notice of Appeal on July 6, 2023. Under Rule 203(B)(1), SCACR, a Notice of Appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. Appellant served her Notice of Appeal on Respondents on September 5, 2023. Thus, Appellant's service of the Notice of Appeal is untimely by fifty days. Appellant's sole purpose in this litigation is to delay this matter as long as possible, because she is getting rental income from Property. Even though Appellant is pro se, she is bound by the same rules as a party with an attorney.

#### **II. Issues Not Raised nor Ruled on by the Trial Court are Not Immediately Appealable**

Appellant filed her Motion for Appeal on the grounds that she was present for the WebEx hearing on June 21, 2023, but was not given access to the hearing by court staff. Appellant has not provided any evidence whatsoever indicating she was, in fact, present. But, more

importantly, Appellant has not raised this issue before the Circuit Court, nor has that issue been ruled on by the Circuit Court. In order for an issue to be preserved for appellate review, it must have been raised to and ruled on below. Issues not raised and ruled upon in the trial court will not be considered on appeal. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003).

Appellant also failed to raise these issues under a Rule 59(e), SCRCPC, Motion to Alter or Amend the Judgment. Therefore, the current issues raised by Appellant are not properly before this Court, and not immediately appealable.

### **III. Appellant’s Motion for Judgment Was Dismissed Without Prejudice, and is Not Immediately Appealable**

On February 13, 2023, Appellant filed a Motion for Judgment. On June 21, 2023, the Honorable Benjamin H. Culbertson denied Appellant’s Motion in a Form 4 Order. Under Rule 41, SCRCPC, unless otherwise specified in an order, a dismissal is without prejudice. Judge Culbertson nowhere indicated his dismissal was with prejudice. Even if Appellant’s Motion for Judgment is construed as a Motion to Dismiss under Rule 12(b)(6), SCRCPC, the denial of such motion is not immediately appealable. Burkey v. Noce, et al., 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012). Here, the denial of Appellant’s Motion for Judgment was without prejudice and thus not immediately appealable.

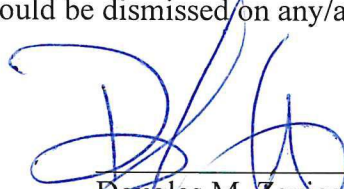
### **IV. Judge Culbertson’s Order is Interlocutory and Not Immediately Appealable**

On June 21, 2023, the Honorable Benjamin H. Culbertson issued a Form 4 Order in which he denied Appellant’s Motion for Judgment and granted Respondents’ Motion to Compel, both of which are interlocutory. Interlocutory orders are not immediately appealable. Patterson v. Spector Broad. Corp., 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985)(citing Lowndes Products,

Inc. v. Brower, 262 S.C. 431, 205 S.E.2d 184 (1974)). Here, the Order denying Appellant's Motion for Judgment was without prejudice, interlocutory, and not immediately appealable. Similarly, the Order compelling Appellant to comply with discovery requests was interlocutory and not immediately appealable.

### **CONCLUSION**

In sum, this Appeal should be dismissed on any/all of the grounds stated above.



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Douglas M. Zayicek, Esq., SC Bar # 11304  
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SC Court of Appeals

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**PROOF OF SERVICE**

I, Douglas M. Zayicek, Esq., as a Shareholder and Partner of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., counsel for Respondents in the above-entitled action, certify that I have this day emailed and mailed a copy of the document(s) listed below, with sufficient postage attached thereto, as follows:

Rhonda Merritt  
3832 State Hwy 50B  
Mooreland, OK 73852

DOCUMENTS:

1. Motion to Dismiss Appeal; and
2. Certificate of Mailing



\_\_\_\_\_  
Douglas M. Zayicek, Esq.

Dated: 9/7/2023  
Myrtle Beach, South Carolina

HOWELL V. BELLAMY, JR.  
EDWARD B. BOWERS, JR.\*  
M. EDWIN HINDS, JR.  
DAVID B. MILLER+  
C. WINFIELD JOHNSON, III  
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GEORGE W. REDMAN, III + \*\* ++  
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+ CERTIFIED MEDIATOR  
++ CERTIFIED ARBITRATOR



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September 7, 2023

**VIA ELECTRONIC & U.S. MAIL:**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Post Office Box 11629  
Columbia, South Carolina 29211

**Re: Thomas Kline v. Rhonda Merritt  
Appellate Case No. 2023-001088**

Dear Ms. Kitchings:

Enclosed please find our \$50.00 filing fee for filing of Respondent's Thomas and Karen Kline's Motion to Dismiss Appeal in the above-mentioned Appeal. We have also filed a Proof of Service in the above-mentioned Appeal upon Rhonda Merritt.

Thank you for your assistance in this matter, and if you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,

BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.

\_\_\_\_\_  
Douglas M. Zayicek

DMZ/jf

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**SC Court of Appeals**

September 7, 2023

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Enclosures as stated

cc: Mr. Thomas Kline (with enclosures)  
Ms. Karen Kline (with enclosures)  
Ms. Rhonda Merritt (with enclosures)